

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

POPPI METAXAS,  
Plaintiff,  
v.

GATEWAY BANK F.S.B., et al.,  
Defendants.

Case No. [20-cv-01184-EMC](#)

**ORDER RE STANDARD OF REVIEW**

**I. INTRODUCTION**

Plaintiff Poppi Metaxas brought this case claiming entitlement to disability and termination of employment benefits under the terms of the Supplemental Executive Retirement Plan (“the Plan”) obtained through her former employer, Defendant Gateway Bank, F.S.B. (“Gateway”). Docket No. 1. The Plan is governed by the Employee Retirement Income Security Act of 1974 (ERISA), 28 U.S.C. § 1001, *et seq.* Plaintiff seeks relief under ERISA §§ 502(a)(1)(B), (a)(3). Docket No. 1.

Currently pending is Plaintiff’s motion to supplement the administrative record. Docket No. 38. To decide Plaintiff’s motion, the Court must make a threshold determination regarding the standard of review that applies to the merits of Plaintiff’s action requesting review of Defendants’ decision to deny benefits to Plaintiff under the Plan.

For the following reasons, the Court determines that Defendants’ decision to deny benefits to Plaintiff under the Plan is reviewed for abuse of discretion.

## II. RELEVANT BACKGROUND

### A. Factual Background

The Plan states that its purpose “is to provide supplemental retirement benefits for certain key employees of Gateway Bank, F.S.B.” Docket No. 41-2 (“Administrative Record” or “AR”) at 23. The administration of the Plan is governed by the provisions in Article VII. *Id.* at 28-29. Accordingly, the “Plan shall be administered by an Administrative Committee which shall consist of not less than three persons appointed by the Board [of Gateway]” and the “Committee shall have the authority to make, amend, interpret, and enforce all appropriate rules and regulation for the administration of this Plan and decide or resolve any and all questions including interpretations of this Plan, as my arise in connection with the Plan.” *Id.* at 28 (Plan § 7.1). “A majority vote of the Committee members constituting a quorum shall control any decision.” *Id.* Furthermore, the “decision or action of the Committee in respect of any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereinunder shall be final and conclusive and binding upon all persons having an interest in the Plan.” *Id.* at 29 (Plan § 7.3).

The Plan sets out a claim procedure for “any person claiming a benefit, requesting an interpretation or ruling under the Plan, or requesting information under the Plan shall present the request in writing to the Committee which shall respond in writing as soon as practicable.” *Id.* (Plan § 8.1). The decision on a claim, including review of the denial of a claim, rests with the Administrative Committee. *Id.* (Plan §§ 8.1-8.4). The Committee’s “decision” regarding a claim for benefits “shall be in writing” and the Committee’s “decisions on review shall be final and bind all parties concerned.” *Id.* (Plan § 8.4).

### B. Procedural Background

Plaintiff filed this action on February 17, 2020. Docket No. 1. On October 5, 2021, Plaintiff filed a motion to supplement the administrative record. Docket No. 38. In order to address Plaintiff’s motion to supplement the administrative record, the Court determined that it is necessary to decide a threshold merits question: what standard of review applies to Plaintiff’s challenge to the denial of ERISA benefits? Docket No. 52. The Court ordered the parties to file

1 supplemental briefing addressing the question. *Id.* The parties briefed the issue. Docket Nos. 56,  
2 57.

### 3 **III. ANALYSIS**

4 A district court reviews a challenge to an ERISA plan's denial of benefits de novo "unless  
5 the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility  
6 for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S.  
7 101, 115 (1989). The Ninth Circuit has held that the default standard of review in ERISA cases is  
8 de novo and that the decision is reviewed for abuse of discretion only if discretion is  
9 "unambiguously retained" by the plan administrator. *Kearney v. Standard Ins. Co.*, 175 F.3d  
10 1084, 1090 (9th Cir. 1999) (en banc) (*quoting Bogue v. Ampex Corp.*, 976 F.2d 1319, 1325 (9th  
11 Cir. 1992)). "Neither the parties nor the courts should have to divine whether discretion is  
12 conferred." *Sandy v. Reliance Standard Life Ins. Co.*, 222 F.3d 1202, 1207 (9th Cir. 2000).  
13 "[U]nless plan documents unambiguously say in sum or substance that the Plan Administrator or  
14 fiduciary has authority, power, or discretion to determine eligibility or to construe the terms of the  
15 Plan, the standard of review will be de novo." *Id.*

16 The Plan at issue here confers discretionary authority to the Committee to construe the  
17 terms of the plan and determine eligibility for benefits, and, thus, the Court reviews Plaintiff's  
18 appeal from denial of benefits for abuse of discretion. *See Firestone*, 489 U.S. at 115; *Sandy*, 222  
19 F.3d at 1207. The Plan unambiguously confers discretionary authority to the Administrative  
20 Committee by stating that the "Committee shall have the *authority to make, amend, interpret, and*  
21 *enforce* all appropriate rules and regulation for the administration of this *Plan and decide or*  
22 *resolve any and all questions including interpretations of this Plan*, as my arise in connection with  
23 the Plan." AR at 28 (Plan § 7.1) (emphases added). Any "decision or action of the Committee in  
24 respect of any question arising out of or *in connection with the administration, interpretation and*  
25 *application of the Plan*. . . shall be *final and conclusive and binding*." *Id.* (Plan § 7.3). The Plan  
26 expressly confirms that this wide grant of discretionary authority to the Administrative Committee  
27 encompasses decisions regarding eligibility and entitlement claims for benefits. "Any person  
28 claiming a benefit. . . under the Plan" shall "present the request in writing to the Committee" and

the Committee’s decision, including the Committee’s “decisions on review” of any claim for benefits under the Plan “shall be final and bind all parties concerned.” *Id.* (Plan §§ 8.1-8.4) (emphasis added).

The Ninth Circuit has held that similar language granting the authority to interpret plan terms, resolve questions arising under the plan, and decide claims for benefits sufficient to confer discretion on the administrator. *See, e.g., Bergt v. Ret. Plan for Pilots Employed by Mark Air, Inc.*, 293 F.3d 1139, 1142 (9th Cir. 2002) (finding grant of the “‘power’ and ‘duty’ to ‘interpret the plan and to resolve ambiguities, inconsistencies and omissions’ and to ‘decide on questions concerning the plan and the eligibility of any Employee’” sufficient to confer discretion); *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1159 (9th Cir. 2001) (finding discretion where the plan gave the administrator “‘the full, final, conclusive and binding power to construe and interpret the policy under the plan . . . [and] to make claims determinations’”); *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1107 (9th Cir. 2000) (holding that a plan conferred sufficient discretion because the administrator “has the ‘sole discretion to interpret’” plan terms and such “‘interpretations ‘shall be conclusive and binding’”); *Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 943 & n.1 (9th Cir. 1999), *abrogated in part on other grounds by Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 966-69 (9th Cir. 2006) (finding language stating “‘we have full and exclusive authority to . . . interpret the Group Policy and resolve all questions arising in the administration, interpretation, and application of the Group Policy’” along with a provision that “‘any decision we make in the exercise of our authority is conclusive and binding’” clearly conferred discretion); *Jones v. Laborers Health & Welfare Trust Fund*, 906 F.2d 480, 481 (9th Cir. 1990) (discretion conferred by language granting the administrator the “‘power . . . to construe the provisions’” of the plan and making such construction “‘binding’”).

The Plan here empowers the Administrative Committee to “interpret, and enforce” the Plan, and to “decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan” through “final and conclusive and binding” decisions. Plan §§ 7.1-7.3. Like the plans in *Grosz-Salomon*, *McDaniel*, *Bendixen*, and *Jones*, although the Plan here does not use the words “eligibility for benefits,” the Plan includes language that clearly

1 encompasses the Committee’s authority to make determinations regarding eligibility for benefits.  
 2 Here, the Plan grants the Committee far-reaching authority to decide “any question arising out of  
 3 or in connection with the administration, interpretation and application of the Plan,” *id.* § 7.3, and  
 4 expressly states that the Committee issues “final and bind[ing]” decisions in response to “[a]ny  
 5 person claiming a benefit, requesting an interpretation or ruling under the Plan.” *Id.* §§ 8.1, 8.4.  
 6 Accordingly, the Court finds that the Plan confers discretionary authority to construe the terms of  
 7 the Plan and to determine claims regarding eligibility for benefits to the Administrative  
 8 Committee, and, thus, the Administrative Committee’s benefits determination must be reviewed  
 9 for an abuse of discretion.

10 Plaintiff’s arguments to the contrary are not persuasive. First, Plaintiff cites *Ingram v.*  
 11 *Martin Martietta Long Term Disability Income Plan*, 244 F.3d 1109, 1112-13 (9th Cir. 2001) to  
 12 argue that the Plan at issue here does not unambiguously confer discretion because it does not  
 13 expressly state that the Committee has discretion to make “benefit determinations” or to  
 14 “determine eligibility for benefits.” Docket No. 156 at 5. No such “magic words” are required,  
 15 *Sandy*, 222 F.3d at 1207, where it is clear that the Plan grants the Committee “final and conclusive  
 16 and binding” authority to “resolve any and all questions” related to “the interpretation and  
 17 application” of the Plan, including to make “final and bind[ing]” decisions in response to “[a]ny  
 18 person claiming a benefit, requesting an interpretation or ruling under the Plan.” *See* Plan §§ 7.3,  
 19 8.1-8.4.

20 Second, Plaintiff’s observation that the Committee lacks authority over certain  
 21 determinations, such as whether an employee has had a “change in employment status,” Docket  
 22 No. 56 at 5, does not negate the relevant fact that the Plan grants the Committee discretionary  
 23 authority to make final, binding and conclusive decisions and to interpret, apply and enforce the  
 24 Plan, including in response to “[a]ny person claiming a benefit. . . under the Plan.” Plan § 8.1.  
 25 Thus, Plaintiff’s argument does not alter the relevant analysis and conclusion that the Committee  
 26 has discretion “to determine eligibility for benefits” under the Plan and “to construe the terms of  
 27 the plan.” *Firestone Tire & Rubber Co.*, 489 U.S. at 115.

28 Third, Plaintiff’s supplemental brief raises, in passing and for the first time, the contention

that the Committee was not properly appointed and, thus, did not have proper authorization to exercise discretion over Plaintiff's benefits claim. Docket No. 56 at 6. Plaintiff did not make such an allegation in her complaint, nor does she point to anything in the record suggesting that she raised this argument during the administrative process of pursuing her benefits claim. To the contrary, the record demonstrates that Plaintiff participated in the claims process before the Committee, including appearing before the Committee at an appeal hearing and did so objecting to the composition of the Committee. Docket No. 41-6. Similarly, in her supplemental brief, Plaintiff claims for the first time that the Committee's decision on her request for review of the denial of her benefits claim was untimely, and thus improper. This claim is not raised in her complaint or in her opening brief. Even if the Court were to consider this argument notwithstanding an arguable waiver thereon, Plaintiff has not shown that an untimely decision by the Committee would change the applicable standard of review. *Viad Corp. Supp'l Pension Plan v. Nasi*, 586 F. App'x 451, 452 (9th Cir. 2014) ("[A]n administrator's procedural violations ordinarily 'do not alter the standard of review unless those violations are so flagrant as to alter the substantive relationship between the employer and employee, thereby causing the beneficiary substantive harm.'") (quoting *Gatti v. Reliance Std. Life Ins. Co.*, 415 F.3d 978, 985 (9th Cir. 2005)).

Fourth, to the extent that Plaintiff argues that the Plan's status as a "top hat plan" alters the applicable standard of review, the Ninth Circuit has rejected this argument. *See Szniewajs v. U.S. Bancorp. Am. & Restated Supp'l Benefits Plan*, 572 F.3d 727, 734 (9th Cir. 2009), *abrogated in part on other grounds by Salomaa v. Honda Long Term Disability Plan*, 637 F.3d 958, 965 (9th Cir. 2011) ("We conclude that importing 'de novo' language into the standard of review simply because the plan involved is a top hat plan would create unnecessary confusion. We will therefore continue to adhere to the framework established by the Supreme Court in *Firestone* and *MetLife* for all covered plans, top hat or otherwise.").

Finally, Plaintiff contends that there was a "financial conflict of interest" that could have influenced the Administrative Committee's decision as to Plaintiff's benefits claim. Docket No. 56 at 4-5. But the existence of a conflict of interest does not alter the standard of review. *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 115 (2008); *Stephan v. Unum Life Ins. Co. of Am.*, 697 F.3d

1 917, 929 (9th Cir. 2012). Instead, the alleged conflict of interest is a factor for the Court to  
2 consider when reviewing the decision for an abuse of discretion. *Glenn*, 554 U.S. at 115; *Stephan*,  
3 697 F.3d at 929 (“While not altering the standard of review itself, the existence of a conflict of  
4 interest is a factor to be considered in determining whether a plan administrator has abused its  
5 discretion.”).

6 **IV. CONCLUSION**

7 For the foregoing reasons, the standard of review that applies to the merits of Plaintiff’s  
8 action requesting review of Defendants’ decision to deny benefits to Plaintiff under the Plan is  
9 abuse of discretion. Accordingly, the proceedings before this Court and generally limited to the  
10 administrative record, save and except evidence pertaining to any conflict of interest which may  
11 affect the level of deference accorded under abuse of discretion review.

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13 **IT IS SO ORDERED.**

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15 Dated: December 6, 2021

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18 EDWARD M. CHEN  
19 United States District Judge  
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